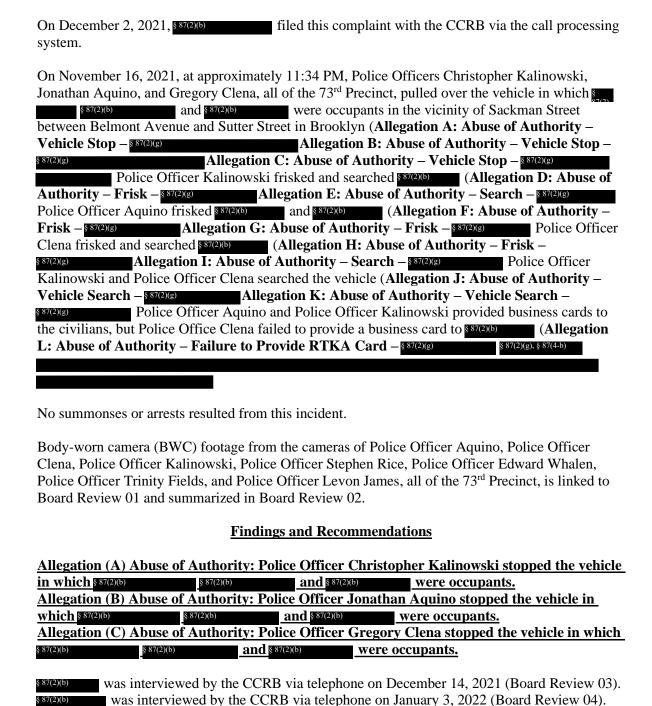
## CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	∏ Fo	orce	$\Box$	Discourt.	U.S.
Rachel Murgo		Squad #4	202107337				O.L.	☐ Injury
Rachel Wurgo		Squau #4	202107337		buse	Ц	U.L.	Injury
Incident Date(s)		Location of Incident:		Pre	cinct:	18	Mo. SOL	EO SOL
Tuesday, 11/16/2021 11:34 PM		Sackman Street between and Sutter Avenue	en Belmont Avenue	,	73	5/	16/2023	5/16/2023
Date/Time CV Reported		CV Reported At:	How CV Reported	: Da	ate/Time	Rece	ived at CC	RB
Thu, 12/02/2021 8:07 AM	u, 12/02/2021 8:07 AM		Call Processing System		nu, 12/02	2/2021	8:07 AM	I
Complainant/Victim	Type	Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. PO Christopher Kalinowski	22920	962515	073 PCT					
2. PO Jonathan Aquino	15569	957337	073 PCT					
3. PO Gregory Clena	08078	964447	073 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. PO Edward Whalen	30242	963328	073 PCT					
2. PO Stephen Rice	02527	964238	073 PCT					
3. PO Levon James	19355	968510	073 PCT					
4. PO Stephen Algozzini	30691	933350	073 PCT					
5. PO Trinity Fields	16249	967874	073 PCT					
6. DT3 Jeffrey Goris	02829	954887	INT FIO PRG					
Officer(s)	Allegatio	on			Inve	stiga	tor Reco	nmendation
A.PO Christopher Kalinowski		olice Officer Christophe	er Kalinowski stopp	ed the				
	vehicle ir § 87(2)(b)	which § 87(2)(b)	§ 87(2)(b)	and				
B.PO Jonathan Aquino		were occupants. olice Officer Jonathan A	Aguino stopped the s	vahicla				
D.FO Jonaman Aquino	in which							
		vere occupants.						
C.PO Gregory Clena		olice Officer Gregory C (2)(b) § 87(2)(b)	Clena stopped the vel and § 87(2)(b)	hicle in				
	which \$ 87 were occ		and sover					
D.PO Christopher Kalinowski		olice Officer Christophe	er Kalinowski friske	ed				
	§ 87(2)(b)							
E.PO Christopher Kalinowski	Abuse: P § 87(2)(b)	olice Officer Christophe	er Kalinowski search	hed				
F.PO Jonathan Aquino		olice Officer Jonathan A	Aguino frisked § 87(2)(t	b)				
2 . 2 0 onuman r iquino	110000.1	once officer somethin i	Admin miner					
G.PO Jonathan Aquino	Abuse: P	olice Officer Jonathan A	Aquino frisked § 87(2)(t	b)				
H.PO Gregory Clena	Ahuse P	olice Officer Gregory C	lena frisked § 87(2)(b)					
11.1 5 G105017 C10110	2 10 usc. 1	once officer diegoly C	iona monea					

Officer(s)	Allegation	Investigator Recommendation
I.PO Gregory Clena	Abuse: Police Officer Gregory Clena searched \$87(2)(b)	
J.PO Christopher Kalinowski	Abuse: Police Officer Christopher Kalinowski searched the vehicle in which \$87(2)(b) and \$87(2)(b) were occupants.	
K.PO Gregory Clena	Abuse: Police Officer Gregory Clena searched the vehicle in which \$87(2)(b) and \$87(2)(b) and \$87(2)(b) were occupants.	
L.PO Gregory Clena	Abuse: Police Officer Gregory Clena failed to provide with a business card.	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

## **Case Summary**



It is undisputed that PO Kalinowski, PO Aquino, and PO Clena stopped the vehicle occupied by \$87(2)(b) and \$87(2)(b) because \$87(2)(b) was not wearing his seatbelt.

CCRB on September 13, 2022 (Board Review 06). PO Kalinowski was interviewed at the CCRB on October 19, 2022 (Board Review 07). PO Aquino was interviewed at the CCRB on October 26,

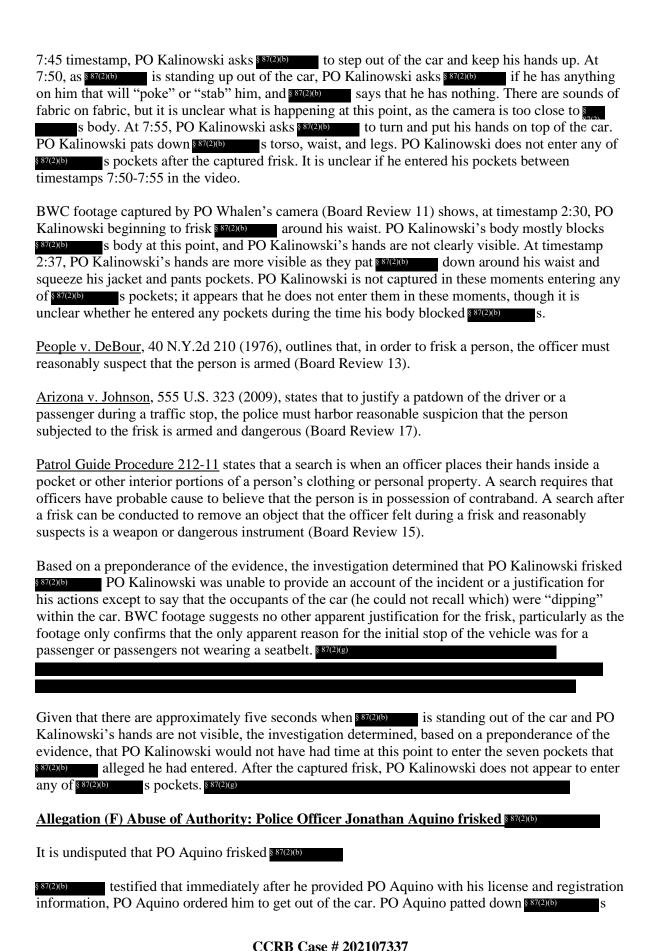
declined to provide a statement (Board Review 05). PO Clena was interviewed at the

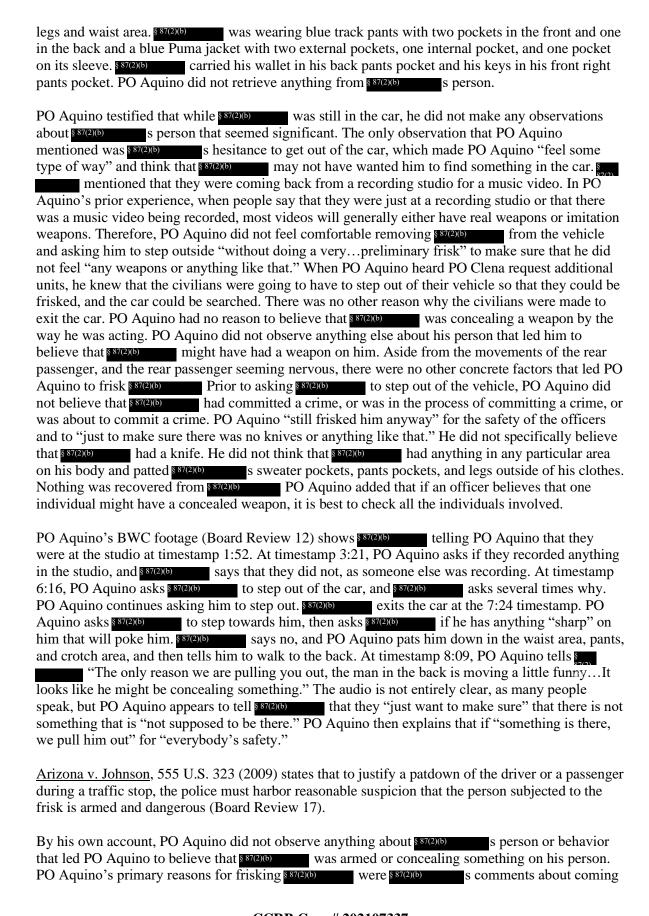
2022 (Board Review 08).

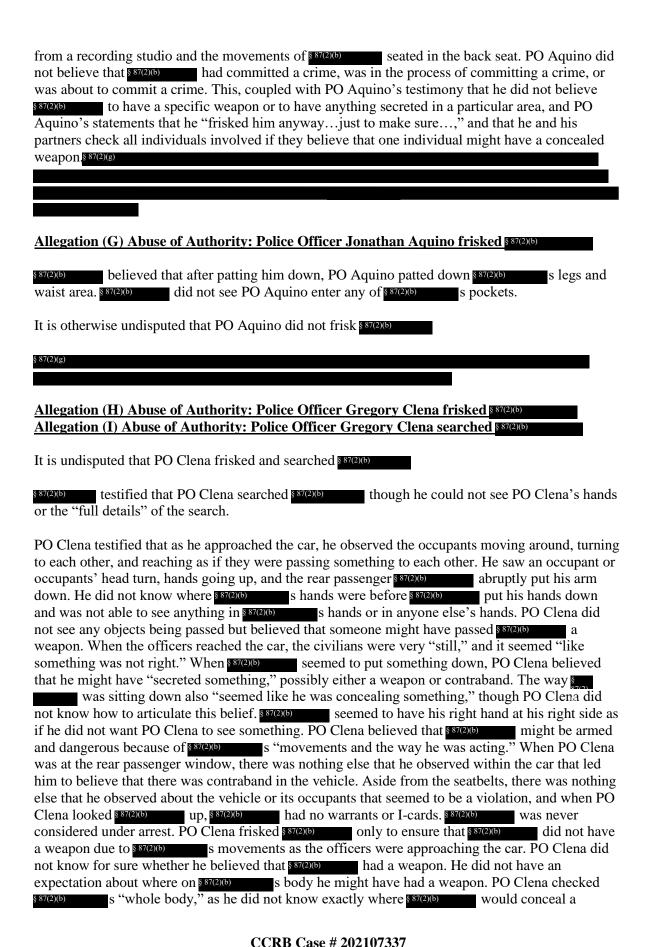
New York State Vehicle and Traffic Law (VTL) §1229-C states that no person sixteen years of age or over shall be a passenger in a motor vehicle unless such person is restrained by a safety belt approved by the commissioner. It is a violation if a person is seated in a seating position equipped with both a lap safety belt and a shoulder harness belt and such person is not restrained by both such lap safety belt and shoulder harness belt (Board Review 09).

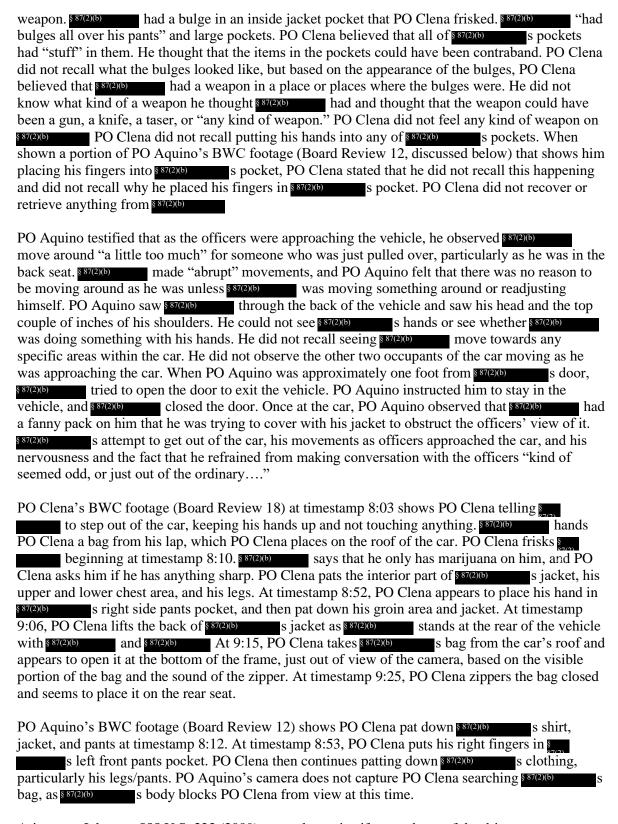
As noted above, it was undisputed that the officers stopped \$87(2)(b) s vehicle because \$100.000 and \$100.000 are stopped \$100.0000 are stopped \$100.000 are stopped \$100.0000 are stopped \$
did not have his seatbelt on while \$87(2)(b) was driving, in violation of New York State VTL \$1229-C. \$87(2)(g)
<u>VIL §1229-C.</u> (***(5)(8)
Allegation (D) Abuse of Authority: Police Officer Christopher Kalinowski frisked
Allegation (E) Abuse of Authority: Police Officer Christopher Kalinowski searched [85/2](b)
Amegation (L) Abuse of Authority. Tonce Officer Christopher Runnowski searched
As noted above, it is undisputed that the civilians' vehicle was stopped because was no wearing his seatbelt.
testified that PO Kalinowski had him get out of \$87(2)(b) s vehicle. PO Kalinowski then patted down his waistband area and pants and entered the four pockets of his jacket and the three pockets of his sweatpants. \$87(2)(b) had his keys and asthma pump in one of the two front pockets of his jacket. He did not believe he had anything inside of his sweatpants pockets. PO Kalinowski did not retrieve anything from \$87(2)(b) s person.
testified that PO Kalinowski patted down s 87(2)(b) s legs and waist area. S 87(2)(b) did not see PO Kalinowski enter any of s 87(2)(b) s pockets.
PO Kalinowski testified that he only recalled that he was "involved in a car stop." He did not recall additional details outside of what he observed from reviewing his BWC footage. He testified initially that he frisked for weapons, as well as for his own safety, the safety of his partners, and the safety of the other occupants of the vehicle. He did not recall any other reason why he frisked for the frisked the area of for the partners is pants pockets and waist and remained over for the car so clothing. He did not remember if he felt anything during the frisk. He did not recall whether he entered any of for speckets. He did not recall whether he made any observations about for special for the believed that for the partners if he believed that for the did not remember if he believed that for might have had a weapon. The occupants were "dipping" and moving around "low," miming leaning forward and reaching his arms down in front of him. He could not see through the door panels. He did not recall where he was when the dipping motion occurred or which of the car's occupants were doing the dipping motion. When asked what he thought the civilians were doing when he saw them dipping, he stated that he could not speculate. PO Kalinowski did not remember whether the dipping was related to his frisking of for the car.  When asked whether the dipping led him to believe that there might be a weapon in the car, PO Kalinowski stated that he would frisk someone involved in a car stop "for safetyor if you believe that they're armed."
In PO Kalinowski's BWC footage (Board Review 10), at the 1:55 timestamp, PO Kalinowski asks

for his ID, and \$87(2)(b) asks why. PO Kalinowski tells \$87(2)(b) that he does not have his seatbelt on and that he saw that he did not take it off when officers stopped them. At the









<u>Arizona v. Johnson</u>, 555 U.S. 323 (2009) states that to justify a patdown of the driver or a passenger during a traffic stop, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous (Board Review 17).

<u>People v. Howard</u>, 147 A.D.2d 177 (1989) notes that the observation of an unidentifiable bulge in a person's pocket is insufficient as a basis for a frisk or search for a gun (Board Review 14).

<u>Patrol Guide Procedure 212-11</u> states that a police officer cannot "frisk" a bag or item of personal property unless the officer has a reasonable suspicion that the person is armed and dangerous and the bag or item could contain a weapon and is within the person's reach (Board Review 15).

As noted above, in order for an officer to frisk someone during a traffic stop, the officer must have reasonable suspicion that the person to be frisked is armed or poses a threat to safety. Per his own testimony, PO Clena did not know for sure whether he believed that \$87(2)(b) had a weapon and could not articulate why he believed that the way \$87(2)(b) was sitting seemed like he was concealing something. PO Clena had no specific beliefs about what kind of weapon there may have been or where it may have been on \$87(2)(b) s person. PO Clena was unable to describe the bulges on \$87(2)(b) s person or articulate what kind of weapon any of the bulges appeared to be.
§ 87(2)(g)
Additionally, PO Clena was unable to provide a reason why he put his fingers into \$87(2)(6) as pockets. Furthermore, as shown in PO Clena's BWC footage, \$87(2)(6) as not in possession of his bag when PO Clena searched it, as required by the Patrol Guide. \$87(2)(8)
Allegation (J) Abuse of Authority: Police Officer Christopher Kalinowski searched the vehicle in which \$87(2)(b) and \$87(2)(b) were occupants.  Allegation (K) Abuse of Authority: Police Officer Gregory Clena searched the vehicle in which \$87(2)(b) and \$87(2)(b) were occupants.
It is undisputed that PO Kalinowski and PO Clena searched the vehicle within which \$87(2)(b) and \$87(2)(b) were occupants without asking for or obtaining consent to do so.
testified that he saw PO Kalinowski inside \$87(2)(b) s car with a flashlight in his
hand, looking at the car's middle console. PO Kalinowski did not ask for permission. PO Kalinowski was the only officer saw in the car, and he only saw him look at the middle console, though he "could definitely hear movements." saw in the car, and he only saw him look at the middle console, though he "could definitely hear movements." saw in the car, and he only saw him look at the middle console, though he "could definitely hear movements." saw in the car, and he only saw him look at the middle console, though he "could definitely hear movements." saw in the car, and he only saw him look at the middle console, though he "could definitely hear movements." saw in the car, and he only saw him look at the middle console, though he "could definitely hear movements."

As noted above, PO Kalinowski testified that he did not recall the incident. He mentioned civilians making a "dipping" motion within the car that was "around their person," but could not provide details on where he was when he observed this, which civilians were "dipping," what parts of the civilians' bodies he could see (including whether he could see their hands or arms), or what he thought the civilians were doing. When asked whether the dipping motion led him to believe that there might be a weapon in the car, PO Kalinowski reiterated that he did not remember the incident.

He did not have a memory of why he searched the vehicle and did not recall whether he believed that there was some kind of contraband, either weapons or drugs, in the vehicle. He did not recall whether he believed that any of the occupants of the car were armed at any point.

PO Clena testified that as he approached the car, he observed the occupants moving around, turning to each other, and reaching to each other as if they were passing something to each other. He saw an occupant or occupants' head turn, hands going up, and the rear passenger \$\frac{87(2)(b)}{2}\$ abruptly put his arm down. He did not know where \$\frac{87(2)(b)}{2}\$ s hands were before \$\frac{87(2)(b)}{2}\$ put his hands down and was not able to see anything in \$\frac{87(2)(b)}{2}\$ s hands or in anyone else's hands. PO Clena did not see any objects being passed. When the officers reached the car, the civilians were very "still," and it seemed "like something was not right." PO Clena searched the "reachable area" of the front and back seat of the vehicle in which he felt that \$\frac{87(2)(b)}{2}\$ or the other occupants of the vehicle might have secreted a weapon, including the front driver's side and rear driver's side. Other than the movements of the occupants of the vehicle, there was no other reason that PO Clena believed that there was a weapon in the car. PO Clena was not searching for anything in the car besides a weapon. He did not know why PO Kalinowski searched the car. PO Clena believed that he found a bag of marijuana and that nothing was retrieved from the vehicle.

PO Aquino was not sure why PO Kalinowski and PO Clena searched the vehicle and was not part of the decision-making to search the vehicle.

PO Kalinowski's BWC footage (Board Review 10) captures his search of the vehicle, beginning at timestamp 9:10. PO Kalinowski searches the front and rear of the passenger's side of the car, including opening the middle console and searching a backpack and a smaller bag.

PO Clena's BWC footage (Board Review 18) captures what appears to be his search of small bag at timestamp 9:15. At timestamp 9:30, PO Clena begins searching the car itself. Though his hands are not always visible, it appears that he searches through the door's compartments and checks the driver's footwell, the area around the driver's seat, a cupholder or other compartment, and the backseat of the driver's side of the car.

<u>People v. Hernandez</u>, 238 A.D.2d 131 (1997) states that there must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search of the vehicle (Board Review 19).

<u>People v. Newman</u>, 96 A.D.3d 34 (2012) states that if officers have ample reason to believe that there is a substantial likelihood that there is a weapon under the seat that poses a specific danger to their safety, then they are only justified in conducting a limited search where they observed the defendant reaching (Board Review 20).

PO Clena was the only officer to offer a reason for the se	arch of the vehicle conducted by himself
and PO Kalinowski. He did not identify a specific area th	at the occupants of the vehicle were
reaching towards, § 87(2)(g)	and ultimately searched the bulk of the
driver's side of the car, as evidenced by his own BWC fo	otage. PO Clena also testified that other
than the movements of the occupants in the vehicle, there	e was no other reason that he believed there
to be a weapon in the car. §87(2)(g)	
§ 87(2)(g)	

## Allegation (L) Abuse of Authority: Police Officer Gregory Clena failed to provide with a business card.

It is undisputed that PO Clena did not provide a business card to searching him. PO Clena's interaction with did not result in a summons or an arrest. PO Aquino and PO Kalinowski each provided a business card to the civilian they frisked.

PO Clena stated that at the end of their interactions, the officers usually offer business cards. Often, only one officer offers, as the officers all have body-worn cameras and work as a team, so if a person finds one of the officers, they can find all of the officers in the car. PO Clena did not give a business card because often, when an officer tries to give a business card to other people, the people will say that they have the partner's business card.

<u>New York City Administrative Code 14-174</u> requires officers to offer a business card to the subject of the police action if the stop, frisk, and search do not result in an arrest or summons (Board Review 21).

<u>Patrol Guide Procedure 212-11</u> also instructs officers to offer an RTKA business card after conducting a level 3 stop (Board Review 15).

As noted above, the investigation determined that PO Clena frisked and searched \$87(2)(b) and that he did not provide \$87(2)(b) with a business card following the encounter despite being required to do so. \$87(2)(g)

§ 87(2)(g), § 87(4-b)	

## Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which \$87(2)(b) has been a party (Board Review 24).
- § 87(2)(b)
- This is the first CCRB complaint to which \$87(2)(b) has been a party (Board Review 26).
- PO Kalinowski has been a member of service for six years and has been a subject in five additional CCRB complaints and 11 additional allegations, of which five were substantiated.
  - \$ 87(2)(g)
  - o 202001034 involved a substantiated allegation of discourteous language. The Board

recomm	ended Command Disciplin	ne A, and the NYPD imposed Com	mand Discipline A.
PO Aquino l		ice for seven years and has been a gations, none of which were substa	
		te for five years and has been a sub dlegation, with no current substanti	
	Mediation, C	ivil, and Criminal Histories	
As of Januar of Claim bei		liations, this case could not be med City Office of the Comptroller ha ident (Board Review 27).	
§ 87(2)(b)			
			_
quad: 4			
nvestigator:	Rachel Murgo	SI Rachel Murgo	02/16/2023
<i>C</i> _	Signature	Print Title & Name	Date
quad Leader: _		IM Raquel Velasquez	02/24/2023
	Signature	Print Title & Name	Date
Reviewer: _	Signature	Print Title & Name	Date